1951. **File No.** Q. civ. P.C/51

Legal **DEPARTMENT**

A **BRANCH**

K.S.R. 11/5 **Subject:—**

Opinions under the code of civil Procedure 1908.

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Q U E R I E S

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Legal Department.

It appears from the Collector's letter at page 77 ante that the property of Seth Akbarallí Jiwaji has not been attached by the Court nor has any prohibition order been issued by the Court requiring Government to stop payment of the monthly allowance to him. The mere fact that Seth Akbaralli Jiwaji is indebted to a large extent and a decree for 1,23,406 has been passed against him would not make any payment to him by Government, in respect of the dues payable a "illegal". It would not, therefore, be necessary to move the Court to allow Government to pay the allowance of Rs.300/- to Seth Akbaralli Jiwaji. There appears, therefore, no legal objection to Government continuing to pay the allowance of Rs.300/- unless and until there is any order of attachment or any prohibitory order by the Court.

Sd. A.D.Mirchandani,
Additional Secretary to Government.

U.R.to P.W.D.,No.4982, dated the 29th March 1951.

MRP.
4/6/56.

Office of the R.L.A.

Execution of decrees passed by Hyderabad Courts -

Civil Manual Chap.II para.11.

The only point raised by the District Judge, Sholapur is that Civil Courts find it difficult to examine darkhasts in suits in which decrees have been passed by the Hyderabad Courts when the areas were within the jurisdiction of the Hyderabad State. The difficulty has reference to paragraph 11 of Chapter II of the Civil Manual which requires Courts to sanction darkhasts by reference to suit registers. The point is merely administrative and not one of law. It can be solved by requesting the Hyderabad State to forward true and certified copies of the relevant extracts from suit registers, whenever a request to that effect may be made by any Court in the State of Bombay in regard to the execution of decrees in suits decided by the former Hyderabad State. The Political and Services Department may ask the Hyderabad State to comply with such request when it is made.

Sd. J.R.Dhurandhar, 5/6
Remembrancer of Legal Affairs.

U.R.to P.& S.D.,No.8873, dated the 6th June 1951.

MRP.
4/6/56.

Legal Department.

Auction sale for decretal dues - refund of forfeited amount.

Civil Procedure Code, 1908. & O.21,R.86

Bombay Land Revenue Code, 1879.

Section 175.

The view taken by the Collector is correct. The sale in this case was for recovery of decretal dues and provisions of Sections 175 of the L.R.C. which are mandatory have no application. It was, however, open to the Collector to exercise the powers under Rule 86 of Order XXI of the Civil Procedure Code which are discretionary. Apparently he has not exercised those powers as while passing the order of forfeiture his attention was not directed to these provisions. It would be competent to Government, therefore, to cancel his order and to direct refund of the forfeited amount as proposed. Concurrence of the R.L.A. is not necessary for issue of the proposed orders.

Sd. A.D.Mirchandani

Additional Secretary to Government.

U.R.to R.D., through F.D., No.8483, dated the 30th May 1951.

MRP.
4/6/56.

Office of the R.L.A.

It is presumed that no notification has been issued by the Central Government unler section 86(4) of the Civil Procedure Code, authorising a State Government to give consent to the filing of a suit against any Prince or Chief (Appendix IV to Chitaley's Civil Procedure Code contains no such notification). If so, the reply proposed by P. & S.D. would be in order.

Sd. J.R.Dhurandhar
6/6
Remembrancer of Legal Affairs.

U.R.to P.& S.D.,No.8948, dated the 7th June 1951.

MRP.
4/6/56.

Office of the R.L.A.

The question raised for the R.L.A's consideration is whether in cases where the salary of a Government servant has been under attachment continuously or intermittantly for a total period of 24 months in execution of one or more decrees, the Government servant concerned should apply to the Court for relief under the proviso to section 60, sub-section (1), clause (i), or whether the disbursing officer can act on his own initiative and stop further deductions from the pay of such Government servant.

2. Warrants for attachment of the salary of Government servants etc. are issued under Order XXI rule 48. That provision in turn requires that the disbursing officer shall, subject to the provisions of section 60, withhold the amount from such salary or allowances. The words "subject to the provisions of section 60" indicate that the warrant of attachment would be subject to the limitations specified in section 60, sub-section (1) clause (i). However, the form of the warrant No.19 in Appendix E to the Civil Procedure Code merely states that the disbursing officer is "hereby required to withhold the said sum of Rs. from the salary of the said ___ _____ in monthly instalments of ___ _____ and to remit the said sum in monthly instalments to this Court." It is clear from this that the warrant does not entitle the disbursing officer to stop further deductions

from

from the salary as soon as the period of attachment as provided in the proviso to section 60, sub-section (1) clause (i) is reached. Consequently, unless there are fresh orders to stop further deductions from the salary, it would not be legally permissible for the disbursing officer to stop further deductions even though the salary is rendered free from attachment under the proviso to section 60, sub-section (1) clause (i). In such cases the Government servant whose salary has become free from attachment under the proviso to section 60 sub-section (1) clause (i) should apply to the Court for an order to stop further deductions from his pay. The disbursing officer may bring the legal position to the notice of the Government servant so that, if he so wishes, may take the necessary steps to move the Court. It would be even open to the disbursing officer to make a reference to the Court and ascertain from it whether in view of the proviso to section 60(1)(i) further deductions from salary should continue to be made and abide by the Court's directions. (see Superintendent, R.M.S.Division Vs. R.M.S. Division Credit Co-operative Credit Society Ltd., Howrah, 1944, 2 Cal. 187).

Sd. A.D.Mirchandani
Remembrancer of Legal Affairs.

U.R.to Accountant General No.6644, dated the 26th April 1951.

MRP.
5/6/56.

Office of the R.L.A.

Civil Procedure Code.
Order 21 rule 46.

When the arrears of late Mr.Bhagwat's salary were attached, Mr. Bhagwat was dead and the arrears had ceased to be the salary. The view taken by the Court is correct, the amount due to him should be sent to the Court as required.

Sd. J.R.Dhurandhar
28/6
Remembrancer of Legal Affairs.

U.R.to R.D.,No.10339, dated the 29th June 1951.

MRP.
6/6/56.